

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

MATTHEW CHARLES WRIGHT, *Petitioner*.

No. 1 CA-CR 15-0645 PRPC
FILED 4-20-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2010-006281-001
The Honorable Pamela Hearn Svoboda, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Matthew Charles Wright, Florence
Petitioner

MEMORANDUM DECISION

Presiding Judge Diane M. Johnsen delivered the decision of the court, in
which Judge Patricia K. Norris and Chief Judge Michael J. Brown joined.

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JOHNSON, Judge:

¶1 Matthew Charles Wright petitions for review of the summary dismissal of his untimely notice for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Wright pled guilty to two counts of attempted molestation of a child and one count of attempted sexual conduct with a minor, each a Class 3 felony and dangerous crime against children. In October 2010, the superior court sentenced Wright to a ten-year prison term on one of the convictions for attempted molestation of a child and placed him on lifetime probation for the other two convictions.

¶3 In August 2015, Wright moved for permission to file an untimely petition for post-conviction relief. Wright did not provide any facts to support a claim for post-conviction relief; instead, he simply stated he "will make his claims clear in his petition once permission is granted." Treating the motion as a notice of post-conviction relief, the superior court summarily dismissed it for failure to provide any factual support for an untimely petition. This petition for review followed.

¶4 On review, Wright argues relief should be granted because the superior court imposed illegal sentences because probation for a Class 3 felony cannot exceed five years. We review the denial of a petition for post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). We may uphold the superior court's ruling "on any basis supported by the record." *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶5 The superior court did not err in summarily dismissing the untimely notice of post-conviction relief. Because Wright's motion was filed more than 90 days after entry of judgment and sentence, it was untimely. Ariz. R. Crim. P. 32.4. When a claim is raised in an untimely post-conviction proceeding, the notice must set forth the "reason for not raising the claim . . . in a timely manner." Ariz. R. Crim. P. 32.2(b). "If . . . meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated . . . in a timely manner, the notice shall be summarily dismissed." *Id.* Because Wright provided no reason for his failure to raise his claim in a timely manner, the superior court properly dismissed the notice.

¶6 Moreover, an untimely petition for post-conviction relief may raise claims only pursuant to Rule 32.1(d), (e), (f), (g) or (h). *Id.*; see also *State*

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v. Shrum, 220 Ariz. 115, 118, ¶ 13 (2009) (noting "few exceptions" to "general rule of preclusion" for claims in untimely petitions). A claim of illegal sentence does not fall within Rule 32.1(d), (e), (f), (g) or (h) because it is encompassed within Rule 32.1(c). See *State v. Cazares*, 205 Ariz. 425, 426, ¶ 4 (App. 2003).

¶7 In any event, Wright's claim is without merit. Although the maximum length of probation for a Class 3 felony is generally five years, because Wright was convicted of sex offenses under chapter 14 of Title 13, the court was authorized to impose lifetime probation. Ariz. Rev. Stat. § 13-902(E) (2017).¹

¶8 Accordingly, although we grant review, we deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA

¹ Absent material revision in the intervening years, we cite the current version of the statute.